

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

RANDY COWHERD, Plaintiff, vs. MIKE LEIDHOLT, Secretary of Corrections, Defendant.	5:19-CV-05027-KES SUA SPONTE ORDER HOLDING THAT PLAINTIFF MAY NOT PROCEED IN FORMA PAUPERIS ON HIS INTERLOCUTORY APPEAL
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Plaintiff, Randy Cowherd, filed a pro se civil rights lawsuit under 42 U.S.C. § 1983. Docket 12. This court denied Cowherd's motion for an emergency preliminary injunction. Docket 32. Now, Cowherd filed a notice of interlocutory appeal to this court's denial of his motion for an emergency preliminary injunction. Docket 33. This Court directed Cowherd to file a motion to proceed in forma pauperis on interlocutory appeal and to file an updated prisoner trust account report because the last prisoner trust account he filed was on November 29, 2019. At this time, Cowherd has not moved for in forma pauperis status on his interlocutory appeal and has not provided the court with an updated prisoner trust account. This court must sua sponte rule on whether Cowherd may proceed in forma pauperis.

Under the Prison Litigation Reform Act (PLRA), a prisoner who "files an appeal in forma pauperis . . . [is] required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). This obligation arises "the moment the

prisoner . . . files an appeal.’ ” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997)). “ ‘When an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan.’ ” *Id.* (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)). “[P]risoners who appeal judgments in civil cases must sooner or later pay the appellate filing fees in full.” *Id.* (citing *Newlin v. Helman*, 123 F.3d 429, 432 (7th Cir. 1997)).

Cowherd’s interlocutory appeal is taken in good faith. The most recent prisoner trust account report shows an average monthly deposit of \$622.57 and an average monthly balance of \$69.03. Docket 17. Thus, the court finds that he has the ability to pay the appellate filing fee of \$505.00 and denies Cowherd leave to proceed in forma pauperis on his interlocutory appeal.

Thus, it is ORDERED:

1. That this court sua sponte denies Cowherd leave to proceed in forma pauperis on his interlocutory appeal. Cowherd must pay the appellate filing fee of \$505.00.

Dated August 21, 2020.

BY THE COURT:

/s/ *Karen E. Schreier*
KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE